

EXHIBIT K

*WILLIAM J. WAGNER vs.
CHIARI & ILECKI, LLP.*

*KRISTIAN L. BROWN
October 5, 2016*



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AND ASSOCIATES

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1 UNITED STATES DISTRICT COURT

2 WESTERN DISTRICT OF NEW YORK

3
4 WILLIAM J. WAGNER,

5 Plaintiff,

6 vs

Docket No. 15-CV-633-JTC

7
8 CHIARI & ILECKI, LLP,

9 Defendant.

10
11 Examination Before Trial of KRISTIAN L. BROWN, held
12 pursuant to the Federal Rules of Civil Procedure, in
13 the law offices of CONNORS LLP, 1000 Liberty Building,
14 424 Main Street, Buffalo, New York, on Wednesday,
15 October 5, 2016 at 2:24 p.m. before Molly Fenske,
16 Notary Public.

1 APPEARANCES:

2
3 LAW OFFICES OF KENNETH HILLER, PLLC
4 BY: SETH J. ANDREWS, ESQ.
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7 sandrews@kennethhiller.com
8 Appearing for the Plaintiff.

9
10 CONNORS LLP
11 BY: PAUL A. WOODARD, ESQ.
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16 Appearing for the Defendant.
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None marked.

1 (Whereupon, the following stipulations
2 were entered into by the respective parties:

3 It is hereby stipulated by and between
4 counsel for the respective parties that the oath of
5 the referee is waived, that filing and certification
6 of the transcript are waived, and all objections,
7 except as to the form of the question, are reserved
8 until the time of trial.)

9 THE REPORTER: Mr. Andrews, you'll supply
10 Mr. Woodard?

11 MR. ANDREWS: Yes.

12 THE REPORTER: Read and sign in sixty
13 days?

14 MR. WOODARD: Yep.

15 KRISTIAN L. BROWN, 92 Peter Street,
16 Buffalo, New York 14207, having been duly called and
17 sworn, was examined and testified as follows:

18 MR. ANDREWS: Hello, my name is Seth
19 Andrews. I am the attorney for the plaintiff in this
20 matter, William J. Wagner. He's filed a lawsuit
21 naming Chiari & Ilecki, the defendant, alleging
22 violations of the Fair Debt Collection Practices Act.
23 We're here today to take your deposition as a fact
24 witness as it pertains to some of the circumstances
25 leading up to the complaint.

1 I'm going to ask you some questions. Do
2 your best to respond the best you can. I need you to
3 give me verbal responses. You can't do head nods. I
4 know it's something that's -- I do it all the time.

5 THE WITNESS: Force of habit, okay. Yes.

6 MR. ANDREWS: I'll help you. We do it to
7 maintain a clear record.

8 If you think you know what I'm going to
9 say, which probably sometimes happens a lot, wait
10 until I'm done so we don't have an overlapping. She
11 can't take it down if we're both talking over each
12 other.

13 If for some reason I'm speaking too fast,
14 which also happens a lot, let me know and I'll try to
15 slow down.

16 If you don't understand a question, let me
17 know. I'll rephrase it.

18 If you need to take a break at any time,
19 that's fine too. We're probably going to be real
20 quick so I don't anticipate it, but if something came
21 up, no problem. I would just ask that if I asked you
22 a question, you answer the question prior to your
23 break. That's pretty much it.

24 THE WITNESS: Okay.

25 EXAMINATION BY MR. ANDREWS:

1 Q. Before I get into the some of the questions
2 though, I just want to make sure, there's no reason
3 that you can think of today that you would be unable
4 to provide accurate and truthful testimony?

5 A. No, no reason.

6 Q. Not on any kind of medication that would
7 prohibit accurate recall or, you know, allow you to
8 provide accurate testimony?

9 A. No.

10 Q. What's your date of birth?

11 A. [REDACTED]/86.

12 Q. Where were you born?

13 A. Buffalo, New York.

14 Q. What's the highest level of education you've
15 obtained?

16 A. High school.

17 Q. Where did you go to high school?

18 A. Hutchinson Technical. Hutch-Tech, sorry, it's
19 a long time ago.

20 Q. In preparation for your deposition today, did
21 you discuss the case with anyone other than your
22 attorney?

23 A. Office workers, co-workers.

24 Q. What co-workers did you discuss it with? And
25 again, I want -- I'm not talking about anything that

1 Paul or another attorney was present for, just
2 conversations you had outside of your counsel.

3 A. Oh, then no.

4 Q. Do you remember if you reviewed any documents
5 in preparing for your deposition testimony today?

6 A. Other than with Mr. Woodard?

7 Q. Yeah.

8 A. No.

9 Q. Have you ever been arrested before?

10 A. No.

11 Q. Ever been convicted of any crimes?

12 A. No.

13 Q. Ever sued anyone before?

14 A. No.

15 Q. Ever been sued before?

16 A. No.

17 Q. Ever testified in court as a party?

18 A. I'm sorry?

19 Q. Ever testified in court as a party?

20 A. No.

21 Q. Ever testified in court as a witness?

22 A. No.

23 Q. Have you ever provided deposition testimony
24 prior to today?

25 A. No.

1 Q. How long have you worked for Chiari & Ilecki?

2 A. Since April of 2008, so three-and-a-half years
3 (sic).

4 Q. And what's your position?

5 A. Legal secretary, legal assistant.

6 Q. Is that what you were when you first started?

7 A. Yes.

8 Q. And just briefly, what's that entail? What are
9 your general responsibilities or duties?

10 A. Handling incoming phone calls, paperwork that
11 comes back and forth from the courts, judges,
12 paralegal work, any type of work that the attorneys
13 actually assign to us as well, processing mail.

14 Q. Do you aid attorneys in drafting any
15 correspondence?

16 A. Not necessarily. Usually everything is
17 reviewed by the attorneys, and if there are forms that
18 we do assist with, they're already prepared by the
19 attorneys and they're reviewed before they go out.

20 Q. Do you know if you assisted in any preparation
21 of any documents on the William J. Wagner, Junior
22 file?

23 A. The only thing that I did in that particular
24 file was just one phone call.

25 Q. When you started with Chiari & Ilecki, do you

1 recall if you were trained in fair debt collection or
2 practices compliance?

3 A. We were trained -- actually, yeah, I was
4 trained by Antoinette and she is -- she was FDCPA
5 certified. She is the one that trained me on
6 telephone calls and also all of the other work that I
7 did as well.

8 Q. Who is Antoinette?

9 A. Antoinette is the office paralegal. She's
10 actually Bill's paralegal, and then any other training
11 came directly from Mr. Ilecki himself.

12 Q. Did you take any exams?

13 A. Yes, we did become FDCPA certified.

14 Q. When you say FDCPA certified, was that from a
15 third-party or was that internal, meaning did Chiari &
16 Ilecki give you an exam or did a third-party?

17 A. It was a third-party.

18 Q. Do you remember when that was when you took
19 your exam?

20 A. I believe it was -- I would have to confirm the
21 exact date, but I believe it was around August. It
22 was either July or August of last year.

23 Q. So when you first started, you don't think you
24 took the exam?

25 A. When I first started --

1 MR. WOODARD: Form.

2 BY MR. ANDREWS:

3 Q. You can answer. When you first started at
4 Chiari & Ilecki?

5 A. I did not take it right away, no.

6 Q. To the best of your recollection, it was July
7 or August of 2015?

8 A. Correct.

9 Q. Did you pass?

10 A. Yes.

11 Q. I figured as much, you're sitting here.

12 A. I believe I got a 96.5.

13 Q. Probably better than I would do.

14 A. We're trained very, very well, very, very
15 thoroughly, especially as far as phone calls go, very,
16 very thoroughly.

17 Q. Are you aware of any written material that the
18 firm provides to you with respect to FDCPA compliance?

19 A. We did get -- we did actually get stuff from
20 the third-party that you were able to print out if you
21 did have any further questions, and if we did ever
22 have questions as far as if there was a possibility of
23 something like that, we would always ask. We would
24 either be asking a paralegal or going directly to the
25 attorney and say, you know, I have a question.

1 Q. As far as you know, there's no training manual
2 or some kind of compliance manual that you're given by
3 Chiari & Ilecki?

4 A. There is, I believe it was actually handed out
5 with the office handbook. It was what -- I don't know
6 if you would say -- if I would call it compliance, but
7 it was definitely rules of the office and how to
8 handle it. I would have to look at it again.

9 Q. That was your recollection, that you received
10 this?

11 A. Correct.

12 Q. Do you know if that manual is updated ever or
13 we'll call it, you know, the correspondence?

14 A. Almost like an office handbook.

15 Q. Yeah.

16 A. I do believe it is updated and I believe
17 Antoinette is the one that actually -- she updates it.

18 Q. I'm going to have you look at -- you've already
19 got it in front of you, perfect. So the document that
20 was magically placed in front of you, I think it was
21 left from the last witness, it's Plaintiff's Exhibit
22 A, and have you seen that document prior to today?

23 A. Yes.

24 Q. If we look at 165, Chiari 165, and if we look
25 at 3/19/25 (sic) and the third column for the dates,

1 are you following me?

2 A. I'm sorry, I was like where are you talking
3 about? Oh, it actually is that one. 164, 166, 165,
4 there we go. Okay, sorry.

5 Q. So it's the third column from the right. It's
6 got dates 3/19/2005 (sic). The next one says
7 telephone call, and if we look all the way to the left
8 it's got your name, okay? So I'm just going to read
9 that comment section, which is the column to the far
10 right. William Wagner CO, I assume that means called
11 in?

12 A. Called office.

13 Q. Called off, O for off makes sense (sic). Dash,
14 says he is not DBTR. Says his DOB is in [REDACTED] 1950.
15 Dash, very upset he keeps getting LTRS from our
16 office. Dash, ADV and can send a copy of DL and SS,
17 pound, if he'd like. Dash, he says for us to just let
18 WI know that he is not DBTR. Dash, ADV we did E-mail
19 ATNY. Was that accurate?

20 A. Correct.

21 Q. Did you ever notify any attorney of that
22 conversation?

23 A. I did not because the attorney had already been
24 notified that he had contacted.

25 MR. WOODARD: Form.

1 BY MR. ANDREWS:

2 Q. So when you say advise we did e-mail attorney,
3 meaning I'm not -- I'm not going to e-mail attorney,
4 you're telling Mr. Wagner we already e-mailed an
5 attorney about your dispute?

6 A. Correct, we had already notified an attorney
7 that he had called.

8 Q. Do you know, is there an office procedure or
9 protocol in place for legal assistants to follow when
10 a person who you think is the debtor or is identified
11 as the debtor is disputing that they are in fact the
12 debtor?

13 A. If a person calls our office and they claim to
14 not be the debtor or the person that we're trying to
15 get in contact with --

16 Q. The debt from?

17 A. Correct. We ask them to provide some type of
18 proof if they can, whether it be a copy of a driver's
19 license that will have their date of birth, and if
20 they're willing to provide something with, you know,
21 even the last four of their social, and then we can
22 confirm, you know, that it is not the file that we
23 have in our office. We usually say if it's okay, you
24 know, if they feel comfortable doing that, but other
25 than that -- and then if they're not willing to do

1 that, we always notify the attorney. We always note
2 the file of what they've said. We always note the
3 file of who's called, and we also notify them that
4 we're going to notify the attorney.

5 Q. That policy you just testified to that's in
6 place, do you know if that's in writing anywhere?

7 A. I would have to check, but that is the office
8 policy. That's always what has been enforced. If
9 it's, you know, if that is the situation, it is always
10 up to the attorney to handle.

11 Q. Assuming it's not in writing, how did you come
12 to learn of that policy?

13 A. We were trained that way. If that was the case
14 when I was trained on phone calls, if there was a
15 situation that happened like that, we were to note the
16 file, notify the attorney if necessary, and it would
17 be up to the attorney to review the file and go
18 forward and as they see fit.

19 Q. Were you to notify attorney in every instance
20 of a dispute?

21 MR. WOODARD: Form.

22 THE WITNESS: If -- in particular, if they
23 hadn't been notified already, then we could. If they
24 absolutely insisted, like, we have a lot of times
25 people will call with the same question. If they

1 absolutely insist we can send multiple messages, but
2 if the attorney has already been notified, we can tell
3 them that the attorney has already been notified.

4 BY MR. ANDREWS:

5 Q. Not looking at the notes, would you remember
6 the 3/19/2015 telephone conversation with Mr. Wagner?

7 A. Not necessarily.

8 Q. As you sit here today, would you remember it?

9 A. Would I remember it word for word exactly?

10 Q. Can you remember the conversation? Do you
11 remember parts of it?

12 A. I remember vaguely.

13 Q. Do you remember his -- it's okay if you don't,
14 I don't want you to guess -- his tone or his demeanor?
15 I mean, was he calm? Was he irate? Was he screaming?
16 Was he yelling? I mean, was there anything that stood
17 out?

18 A. I don't remember him being that way, but that's
19 why we note the file when we take the phone call.
20 Because if there was an instance say where you were to
21 ask me today, you know, do you remember who you talked
22 to two weeks ago, we wouldn't necessarily remember it
23 unless it was yesterday, but that's why we note the
24 file when it happens, so that way going back we can
25 see what exactly happened that day and the time that

1 we took the phone call.

2 Q. Is there anything -- you said you vaguely
3 remember I believe. Is there anything that sticks out
4 in your mind?

5 A. He might have been frustrated.

6 Q. Anything else?

7 A. Not really, no.

8 Q. Do you remember if you stated to him that he
9 would no longer be contacted by your office?

10 A. I would never have said that because that's not
11 up to -- it wouldn't have been up to me to decide to
12 stop contacting him.

13 Q. Do you remember if you told him you would send
14 an E-mail to the attorney?

15 A. No. If I had seen in there that it was already
16 sent to the attorney, I wouldn't send another one. I
17 would note the file so that way when the attorney did
18 review the file they would see okay, he's called.
19 He's called again, you know, and that is also why we
20 note the file too. So that way when the attorney
21 reviews the file they say okay, you know, he talked to
22 this person and then he called again and talked to
23 this person after that.

24 Q. In your capacity as legal assistant, do you --
25 do you assist in any way any of the preparation of the

1 documents on this matter?

2 A. Not on that particular file, no.

3 MR. ANDREWS: Last one, you're all done.

4 MR. WOODARD: No questions.

5 ***2:39 p.m.***

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ERRATA SHEET

PAGE LINE

8 2change: 2008 should read 2013reason: start date was in April 201312 6change: 3/19/2005 should read 2015reason: incorrect year12 13change: off should read office

reason: _____

change: _____

reason: _____

change: _____

reason: _____

change: _____

reason: _____

change: _____

reason: _____

change: _____

reason: _____

change: _____

reason: _____

I Kristian Brown hereby certify
 that I did review and if necessary correct this
 deposition and that the foregoing pages 1 through
18 are a true and accurate recording of said
 proceedings.

Kristian Brown

Subscribed and sworn to before me this
6 day of December, 2016.

Victoria E. Hamilton

Notary Public

VICTORIA E HAMILTON
 NOTARY PUBLIC, STATE OF NEW YORK
 LICENSED IN NIAGARA COUNTY
 NO. 01HA6349307
 MY COMM. EXP. 10/17/2020

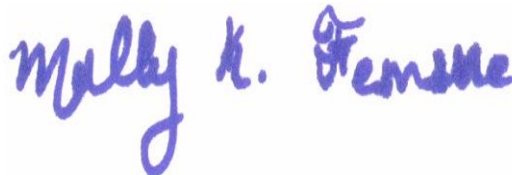
1 STATE OF NEW YORK
2 COUNTY OF ERIE

3 I, Molly Fenske, a Notary Public in and for the
4 State of New York, do hereby certify:

5 That the witness whose testimony appears herein
6 before was, before the commencement of his deposition,
7 duly sworn to testify to the truth, the whole truth
8 and nothing but the truth; that such testimony was
9 taken pursuant to notice at the time and place herein
10 set forth; that said testimony was taken down in
11 shorthand by me and thereafter under my supervision
12 transcribed into the English language, and I hereby
13 certify the foregoing testimony is a full, true and
14 correct transcription of the shorthand notes so taken.

15 I further certify that I am neither counsel for
16 nor related to any parties to said action, nor in
17 anywise interested in the outcome thereof.

18 IN WITNESS WHEREOF, I have hereunto subscribed my
19 name this 11th day of November, 2016.

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21
22
23
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Notary Public
State of New York